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SB 2860 RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Statement for
Senate Committee on
Planning and Environment
Public Hearing - March 2, 1988

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This statement was prepared with the assistance of Casey Jarman, School of Law. It does not represent an institutional position of the University of Hawaii.

SB 2860 would amend HRS Chapter 343 to provide for non-judicial appeal of agency EIS determinations. While we have strongly supported previous versions of this bill and remain supportive of the need for establishment of procedures for administrative appeal of agency determinations, we are concerned that this bill would be vetoed as were previous versions of the bill in 1984 and 1987. Although we do not accept the rationale for the previous vetoes, we are reluctant to pursue a course which is likely to be unproductive in the face of specific statutory needs in the environmental arena. In particular, we feel it appropriate for this bill to address the question of the scope of authority of the Environmental Council as provided in HRS Chapter 343.

The Environmental Council already has the statutorily mandated authority to issue a declaratory ruling on the nonacceptance of of an EIS (HRS 343-5(c): "An applicant ... may appeal the nonacceptance to the environmental council....In any affirmation or reversal of an appealed nonacceptance, the council shall provide the applicant and agency with specific findings and reasons for its determination. The agency shall abide by the council's decision."

In addition, the council's Rules of Practice and Procedure (Title 11, Chapter 201) issued under statutory mandate (HRS Chapter 343-6) clearly convey authority to issue declaratory orders "as to the applicability of any statutory provision or any rule or order of the council." These rules were approved and signed by former Governor Ariyoshi on November 25, 1985 and were further approved as to form by the Attorney General's Office at that time.

However, on February 16th of this year, the Attorney General issued an opinion that the existing statutory language "does not provide the council with the authority to adopt rules which define the concept of significant [environmental] effect" even though such a concept is a specific provision of Chapter 343 defined in Section 343-2 and referenced in Sections 343-5(b), (c), and 343-6(a)7.

Thus, there has existed over the past several years a clear divergence of opinion within the AG's Office as to the meaning of the statutory language. Furthermore, the environmental legal specialist at the University's School of Law has noted that such diversity of legal opinion is not uncommon in cases where statutory language is non-specific to the issue in question. As a result, the Environmental Center perceives a need to include specific language in Chapter 343 which affirms the authority of the council to issue declaratory rulings covering the scope of the statutory provisions of the chapter. Consequently, we propose that the following language be included in Chapter 343 HRS:

{343- Declaratory Orders and Advisory Opinions. On petition of an interested person or agency, or on its own motion, the council may issue a declaratory order or an advisory opinion as to the applicability of any statutory provision of this chapter or of any rule or order promulgated by the council in matters pursuant to this chapter.

The Environmental Center has played a central role in the evolution of Hawaii's environmental statutes over the years, and we would be pleased to continue providing whatever assistance is requested in the further consideration of this bill.